IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

Nos. 72-694, 72-753, 72-791, 72-929

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,
Appellants,

vs.

EWALD B. NYQUIST, ETC., ET AL.,
Appellees.

WARREN M. ANDERSON, AS MAJORITY LEADER AND PRESIDENT PRO TEM OF THE NEW YORK STATE SENATE,
Appellant,

vs.

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,
Appellees.

EWALD B. NYQUIST, ETC., ET AL.,
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vs.

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,
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PRISCILLA L. CHERRY, ET AL.,
Appellants,

vs.

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR LAWRENCE E. KLINGER AS AMICUS CURIAE.

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MAY IT PLEASE THE COURT:

PRELIMINARY STATEMENT.

The interest of Lawrence E. Klinger as *amicus curiae* is fully set forth in his affidavit which is attached to his

motion for leave to file this brief. The affidavit is incorporated herein by reference.

In June, 1972, the Illinois Legislature enacted the "Nonpublic State Parental Grant Plan for Children of Low Income Families Act" (hereinafter the "Illinois Low Income Family Act").[1] The Act provides for State payments to enable children from families whose annual income is less than $3,000 to attend accredited elementary and secondary nonpublic schools. Payments under the Act are made jointly to the child's parents and the nonpublic school to apply to the child's tuition; the grants are limited to the per-pupil amount contributed by the State to the public school district within which the child resides. Thus, the Illinois Low Income Family Act is substantially similar to Section 2 of Chapter 414 of the 1972 New York Laws, *i.e.*, the "New York Elementary and Secondary Education Opportunity Program", now before this Court.[2]

In July, 1972, immediately after the Illinois Low Income Family Act was signed into law, Lawrence E. Klinger instituted a mandamus proceeding in the Illinois courts to secure a determination of the Act's constitutionality. (*People ex rel. Klinger* v. *Howlett*, No. 72 L 8703, Circuit Court of Cook County.) A full trial was held in the Circuit Court of Cook County before the Honorable Ben Schwartz, and extensive testimony and documentary evidence was introduced by the parties. Petitioner Klinger introduced the testimony of leading educational experts who have observed and experienced at first-hand the conditions and levels of learning achieved in both the public and nonpublic inner-city or "ghetto" schools of Chicago,

1. The Act is reproduced in full in Appendix "B", *infra*.

2. The New York Elementary and Secondary Education Opportunity Program provides for State tuition grants to reimburse a portion of the costs of educating nonpublic elementary and secondary school children from families whose total annual income is less than $5,000. Tuition grants are made to the parents and are limited to a maximum of 50% of their tuition costs.

where (as the trial court found) the overwhelming majority of lower income families are concentrated. The foremost expert witness testifying was Dr. Donald Erickson, a Professor in the Department of Education at the University of Chicago.[3]

On the basis of the evidence thus adduced, the trial court made extensive factual findings with respect to the critical need for the Illinois Low Income Family Act. The findings are contained in the trial court's Memorandum Opinion and Judgment Order, the pertinent portions of which are reproduced in Appendix "A", *infra*.

With regard to the conditions now prevailing in the inner-city public schools, the trial court found that:

> "It is thus clear, not only from Dr. Erickson's testimony but from the other evidence in the record, that public schools in the inner-city areas are doing a woefully inadequate job in teaching poor children the most basic literacy skills. The Court makes no findings as to the reasons or causes for this inadequacy and indeed, is not certain that precise reasons could be ascertained through empirical evidence. But the Court does find that the inadequacy exists. In reading levels alone numerous children in inner-city public schools are several years behind their more fortunate counterparts in higher income areas or in private schools. Unless some interim solution or help is provided by way of an alternative to the public schools, these children in the present generation will never catch up and will be educationally lost." (Appendix "A" *infra*, p. A12.)

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3. The trial court stated concerning Dr. Erickson's qualifications as an expert:

> "It would unduly prolong this opinion to recite Dr. Erickson's qualifications, experience and published writings in the field of education and educational administration, especially in the area of inner-city schools, both public and non-public. It is in fact conceded that Dr. Erickson is one of the nation's leading, if not foremost, experts in his field and has closely observed and studied the public and non-public schools of the City of Chicago for the past ten years." (Appendix "A" *infra*, p. A11.)

With respect to nonpublic schools in inner-city areas, the trial court observed:

> "Dr. Erickson further testified, and was substantiated by the testimony of three leading non-public school educators in the 'ghetto' areas of Chicago, that existing non-public schools in such areas constitute the only alternative that is now available for receiving and educating impoverished pupils. Such schools are now succeeding in the critical areas where the public schools have failed, especially in the area of improving and adapting teaching techniques and methodology to fit the unique needs of children from low income families. * * * These witnesses gave graphic and compelling testimony that their schools can and do accept 'drop-out' pupils from the ghetto area public schools and succeed in educating them where the public schools have failed to do so. Indeed, impressive numbers of such children have gone on to college. Unfortunately, such schools are severely hard-pressed financially, and could accept many more pupils if more funds were made available now to enable low income parents to enroll their children in the schools." (Appdix "A" *infra,* p. A13.)

The court then specifically found:

> "In sum, the evidence clearly shows and the Court finds that (1) there is a present and grave emergency in the failure of public schools in impoverished or 'ghetto' neighborhoods to meet the basic educational needs of lower income pupils, and (2) existing non-public schools in such areas constitute the only alternative now available to at least partially meet the present crisis and save, at minimum, several thousand impoverished children from being deprived of a basic education." (Appendix "A" *infra,* pp. A13-14.)

The trial court also recognized that the Illinois Low Income Family Act presented a case of first impression, and that "no decided case has come to the Court's attention in which the evidence in the record was similar to the evidence

adduced in the instant case." (Appendix "A" *infra,* p. A10.) Nonetheless, and despite the findings concerning the severe crisis in the failure of inner-city public schools and the undeniable necessity for the Low Income Family Act, the trial judge held the Act invalid under the First Amendment solely because, in his view, it violated the "advancement of religion" criterion of *Lemon* v. *Kurtzman,* 403 U. S. 602 (1971). Although the trial judge was "most sympathetic to the plight of the children for whose benefit" the Act was intended, and was "persuaded that petitioner's [Klinger's] position is most compelling from the standpoint of reason and common sense," the trial judge believed he had no legal choice but to strike down the Act.

Klinger appealed the decision to the Illinois Supreme Court where the case has been briefed, argued and taken under advisement. (*People ex rel. Klinger* v. *Howlett,* Docket No. 45419.)

ARGUMENT.

We respectfully submit that the findings of the trial court in *People ex rel. Klinger* v. *Howlett, supra,* based on a full evidentiary trial record, are singularly worthy of the Court's consideration in formulating its decision in the instant case. Of course, neither the record nor the judgment in the *Klinger* case is now before this Court for review; however, the First Amendment issues involved in *Klinger* are closely similar if not identical to those presented by the New York statute in the case at bar, and the Court's decision will in all likelihood have critical influence over the ultimate resolution of the *Klinger* appeal. We believe that consideration of the findings and evidence in the *Klinger* case will aid in identifying and illuminating the "boundaries of permissible government activity in this sensitive area of constitutional adjudication." *Tilton* v. *Richardson,* 403 U. S. 672, 678.

I.

THE DISTRICT COURT BELOW AND THE ILLINOIS COURT IN KLINGER IMPROPERLY TREATED THE CRITERIA OF THE LEMON CASE AS INFLEXIBLE, MECHANICAL AND ARBITRARY.

In *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971), the Court enunciated the governing First Amendment criteria for testing statutory aid to nonpublic education.[4] In so doing, however, the Court cautioned that in this unique and sensitive constitutional area, substance must prevail over form and courts are not "to engage in a legalistic minuet in which precise rules and forms must govern". 403 U. S. at 614. And, in the companion case, *Tilton* v. *Richardson*, 403 U. S. 672 at 678, the Court even more strictly admonished that:

> "There are always risks in treating criteria discussed by the Court from time to time as 'tests' in any limiting sense of that term. *Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics.* The standards should rather be viewed as guidelines with which to identify instances in which the objectives of the Religion Clauses have been impaired." (Emphasis added.)

We submit that in both the case at bar and the *Klinger* case, the trial courts did precisely what this Court so painstakingly warned against in *Lemon* and *Tilton;* both courts engaged in a "legalistic minuet" and treated the criteria of *Lemon* as simplistic, inflexible and mechanical tests akin to the laws of natural science.

Indeed, the trial judge in the *Klinger* case expressly viewed the *Lemon* decision as "a simplistic if not arbitrary

4. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally the statute must not foster an 'excessive government entanglement with religion'." (403 U. S. 602, 612-13.)

prohibition of direct state grants of money to aid church-affiliated schools" and as a test that "does not lend itself to . . . a flexible and enlightened approach. . . ." (Appendix "A" *infra*, p. A16.) Moreover, the trial judge candidly acknowledged that he felt helplessly bound in an appalling judicial straitjacket. Although he was "most sympathetic to the plight of the children for whose benefit" the Low Income Family Act was intended, and was also convinced that Klinger's position was "not only persuasive but logically unassailable," the trial judge felt he had no recourse but to void the Act under *Lemon* because *"the line has been drawn."* (Appendix "A" *infra*, pp. A16, A18; emphasis in original.) He thus concluded:

> "The State *may* spend public funds to furnish sectarian school children with school books, school bus transportation, school lunches, health care, counseling, guidance, and innovative educational services, but the State may *not* disburse funds to directly reimburse the parents or the sectarian schools for any portion of the costs of educating the children, because to do so would 'advance religion.' Such a result is not unlike that recently reached in *Flood* v. *Kuhn*, 32 L. Ed. 2d 278 (1972), where the Supreme Court, in adhering to the rule exempting professional baseball from the federal anti-trust laws, candidly recognized:
>
> > 'Even though others might regard this as "unrealistic, inconsistent, or illogical," . . . the aberration is an established one. . . .' (32 L. Ed. 2d at 743-744.)
>
> "So here, the 'aberration' is an 'established' one, and the Court regrettably has no choice but to hold that Senate Bill 1489 is invalid under the 'advancement of religion' test of *Lemon*." (Appendix "A" *infra*, p. A18.)

In so holding, the court gave controlling weight to the fact that the majority of nonpublic schools in the inner-

city are Catholic parochial schools.[5] (Appendix "A" *infra*, p. A14). We submit, however, that the court in *Klinger* (and the District Court in this case) misconstrued the "advancement" criterion of *Lemon* by ignoring that it is only those programs whose *"primary effect"* is to advance religion that are impermissible. (403 U. S. at 612; emphasis added.) The primary effect of the Illinois Act is clearly and overwhelmingly secular; it is to alleviate the present crisis that exists in the inner-city public schools by enabling low-income children to obtain a basic education in the only schools that are now available to provide it. Moreover, as this Court held in *Tilton*, stereotypes such as the "typical sectarian" school should not be the basis for striking down needed legislation. (403 U. S. at 682.)

In sum, we submit that the simplistic process by which the District Court below and the trial court in the *Klinger* case reached their decisions is antithetical to the spirit and constitutional philosophy of *Lemon* and *Tilton*. When a trial court expressly admits, as the court did in *Klinger*, that a crisis in the education of impoverished children undoubtedly exists and there is only one solution available to alleviate the crisis, the situation clearly cries out for more pragmatic, flexible and enlightened guidelines than those which the trial judge believed had hopelessly handcuffed him. If the criteria of *Lemon* are so stultified and constrictive as to spawn decisions such as those reached in *Klinger* and the case at bar, we submit the Court should now plainly amplify the criteria and render them more flexible for the guidance of the lower courts.

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5. The evidence demonstrated that although the majority of nonpublic schools in inner-city areas are Catholic parochial schools, such schools are not primarily or even secondarily religious in their purpose and mission. There are many non-Catholic students in inner-city Catholic schools—in certain areas, 70-80% of the students are non-Catholic. There is no proselytization or indoctrination in such schools, and there is no requirement of religious

CONCLUSION.

We respectfully submit that both the New York and Illinois programs for state aid to low-income children attending nonpublic schools are valid. In the event, however, that the Court decides adversely to the New York program, and in keeping with the Court's admonitions against placing form over substance and treating time-worn stereotypes as living reality, we respectfully submit that the decision should not be cast so as to preclude favorable consideration of the Illinois Low Income Family Act in light of the unique and extensive factual record and findings of the trial court in the *Klinger* case.

Respectfully submitted,

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March 23, 1973.

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courses or attendance at religious services to graduate. In the 45 ghetto schools operated by the Catholic Archdiocese of Chicago, the majority of the teachers are lay people, and many of them are not even Catholics. Finally, the evidence showed that the mission of the church-affiliated schools in ghetto areas is not to proselytize, but to teach children to read and write. (Appendix "A" *infra*, p. A14.)

APPENDIX A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department, Law Division

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. LAWRENCE E. KLINGER, *Petitioner,*
vs.
MICHAEL J. HOWLETT, Auditor of Public Accounts, State of Illinois, *Respondent.*
No. 72 L 8703

MEMORANDUM OPINION AND JUDGMENT ORDER

At issue in this cause is the constitutionality of three enactments* of the Illinois General Assembly that were signed into law by the Governor on July 1, 1972. The three enactments are:

• • • • •

2. *Senate Bill 1489,* entitled the "Non-Public State Parental Grant Plan for Children of Low Income Families Act of 1972". This Act provides for state contribution to reimburse a portion of the costs of educating non-public elementary and secondary school children from families whose total income is less than $3,000 per year. The grants under this Act are limited in amount to the actual per-pupil

* [The trial court held constitutional Illinois Senate Bill 1492, which provides for textbook and auxiliary service grants to parents of children in nonpublic schools and Senate Bill 1499 which provides "seed money" for the development and administration of innovative educational programs. For the sake of brevity those portions of the Opinion have been omitted.]

amount contributed by the State to the public school district in which the non-public school child resides. For the purpose of implementing the Low Income Family Act, the Legislature has appropriated the sum of $4,500,000. (Senate Bill 1497.)

* * * * *

On June 30, 1972, the State Auditor of Public Accounts, the Honorable Michael J. Howlett, issued a formal directive to his employees commanding that no vouchers be processed or warrants issued to release any state funds in connection with the bills described above, pending final judicial determination of their constitutionality. On July 1, 1972, immediately after the bills were signed into law by the Governor, the petitioner herein, Lawrence E. Klinger, filed a mandamus proceeding in the Supreme Court of Illinois to secure a determination of the bills' validity under both the United States and Illinois Constitutions, and an original writ of mandamus requiring the Auditor of Public Accounts to rescind and withdraw his official directive of June 30, 1972. Mr. Klinger is a citizen, voter, taxpayer and real property owner residing in Chicago. He and his wife have three children attending non-public schools in Chicago.

On July 6, 1972, the Supreme Court of Illinois entered an Order declining to entertain and hear Mr. Klinger's petition as an original matter. The Court's Order stated:

> "It appears to the Court, based in part upon our earlier consideration of similar legislation, that the degree of 'entanglement' of church and State involved in the implementation of the questioned statutes can best be assessed on the basis of a record of testimony or other evidence presented initially in an adversary action in a trial court, and thereafter expeditiously reviewed pursuant to the provisions of Rule 302 (b)."

On July 7, 1972, the instant mandamus proceeding was accordingly filed by Mr. Klinger in this Court; the petition seeks an adjudication that the statutes involved are constitutional, and prays for a writ of mandamus ordering the revocation and withdrawal of the respondent Howlett's directive of June 30, 1972. Notwithstanding the Illinois Supreme Court's denial as aforementioned, this Court construes that Court's order as a remandment order for an evidentiary and adversary trial. Such a trial has been held and extensive testimony and documentary evidence has been introduced by the parties on all issues presented. This evidence has been carefully considered by the Court, together with the legal arguments presented by able counsel on both sides.

The three statutes are all assailed under the "religious" clauses of both the First Amendment to the U. S. Constitution and the Illinois Constitution of 1970. The First Amendment concisely forbids any laws "respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The Illinois Constitution of 1970 contains two sections pertaining to religion, Article I, Section 3 and Article X, Section 3. The former is a guarantee of "free exercise and enjoyment" of religion and is plainly equivalent by its terms to the "free exercise" clause of the Federal First Amendment. Article X, Section 3 reads:

> "Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other

> personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose."

This section was readopted verbatim from the preceding Illinois Constitution of 1870, in which it appeared as Section 3 of Article VIII. The record of deliberations of the Constitutional Convention that drafted the 1970 Constitution clearly shows that the framers intended Article X, Section 3 to be coterminous with the religious establishment clause of the Federal First Amendment. (1970 Transcripts of Ill. Const. Convention, Apr. 23, 1970; pp. 3-6; Apr. 28, 1970, p. 50 and pp. 68-75.) Moreover, the prior decisions of the Illinois Supreme Court construing Section 3 have held that it is, if anything, *less* strict than the establishment clause of the First Amendment. In *Dunn* v. *Chicago Industrial School for Girls,* 280 Ill. 613 (1917), the Court sustained payments made from public funds *directly* to a sectarian (Catholic) school to help defray expenses for the care and education of children placed there by the juvenile authorities. In holding that such payments did not violate Article VIII, Section 3, the Court declared:

> "The constitutional prohibition against furnishing aid or preference to any church or sect is to be rigidly enforced, but it is contrary to fact and reason to say that paying less than the actual cost of clothing, medical care and attention, education and training in useful arts and domestic sciences, is aiding the institution where such things are furnished." (280 Ill. at 618.)

To the same effect are *Dunn* v. *Addison Manual Training School for Boys,* 281 Ill. 352 (1917); *St. Hedwig's Industrial School for Girls* v. *Cook County,* 289 Ill. 432 (1919). In light of these decisions, and the record of deliberations of the 1970 Illinois Constitutional Convention, the Court

is convinced that if the three statutes or any of them here in question are held not to infringe the First Amendment to the U. S. Constitution, there can be no question as to their validity under the Illinois Constitution of 1970.

In considering the federal constitutional issue, this Court must look to the decision of the Supreme Court of the United States in *Lemon* v. *Kurtzman, Earley* v. *DiCenso* and *Robinson* v. *DiCenso,* 403 U. S. 602 (1971), hereafter referred to as the *Lemon* decision, and *Tilton* v. *Richardson,* 403 U. S. 672 (1971). It would be pedantic to review at length earlier cases that dealt with First Amendment limitations on state or federal governmental expenditure of public funds to aid non-public or sectarian schools.

At issue in *Lemon* were statutes of Rhode Island and Pennsylvania that authorized grants of state tax monies to assist non-public schools; the Rhode Island Act authorized the state to pay annual salary supplements to teachers of secular subjects in private schools, and the Pennsylvania plan authorized the state to "purchase" secular educational materials and services from private schools by directly reimbursing them for such materials and services provided to their pupils. Both statutory schemes required extensive and elaborate inspection, record-keeping, accounting and auditing procedures to assure that state funds were used only for secular purposes and not for religious instruction.

The Court in *Lemon* comprehensively reviewed its past holdings concerning the First Amendment "wall" of separation between church and state and noted that total or absolute separation in a modern society is not possible. "Some relationship between government and religious organizations is inevitable," *e.g.,* governmental fire and safety inspections of church buildings and schools, and

requiring compliance with state compulsory attendance laws in church-affiliated private schools. (403 U. S. at 614.) The Court also approvingly noted its prior decisions upholding state aid to non-public school children or their parents in the form of school bus transportation, *Everson* v. *Board of Education*, 330 U. S. 1 (1947), and secular textbooks, *Board of Education* v. *Allen*, 392 U. S. 236 (1968). The Court in *Lemon* summarized the kinds of state assistance held permissible as follows:

> "Our decisions from *Everson* to *Allen* have permitted the States to provide church-related schools with secular, neutral, or non-ideological services, facilities, or materials. Bus transportation, school lunches, public health services, and secular textbooks supplied in common to all students were not thought to offend the Establishment Clause." (403 U. S. at 616-17.)

The Court also was careful to point out that the constitutional mandate of separation of church and state is delicate and clouded and cannot be applied mechanically or arbitrarily as new cases arise; the Court thus declared:

> "Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.
>
> "The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment." (403 U. S. at 612.)

The Court then proceeded to delineate three criteria evolved in past cases for measuring particular state educational programs under the religious clause of the First Amendment: (1) The program must have a secular purpose; (2) The program must have a primary effect that neither advances nor inhibits religion; and (3) The program must not entail excessive government entanglement

with religion. (403 U. S. at 612-13.) As applied to the Rhode Island and Pennsylvania programs in question, the first two criteria were held satisfied in *Lemon;* both programs were found plainly secular in purpose and did not advance or inhibit religion. In so holding the Court reaffirmed its past pronouncements that operation of private schools by religious organizations or sects *per se* does not preclude all forms of state assistance, *e.g., Board of Education* v. *Allen,* 392 U. S. at 247-48:

> "[P]rivate education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. . . . [T]he continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

As to the third criterion, excessive entanglement, the Court identified three further elements to be examined: (1) the character and purposes of the institutions benefited, (2) the nature of the aid that the state provides, and (3) the resulting relationship between the government and the religious institutions. (403 U. S. at 615.) The Court held that the Rhode Island and Pennsylvania programs failed to pass muster; both of them entailed "excessive entanglement" between church and state *because of the frequent and compulsory inspections, accountings, audits and surveillance necessary to assure that the state funds would not be used for sectarian purposes or teachings.* (403 U. S. at 620.)

With regard to the entanglement criterion, the petitioner

has introduced (in addition to the three statutes themselves) the administrative rules or guidelines that have been prepared by the Office of the Superintendent of Public Instruction for the implementation and administration of Senate Bills 1492 and 1489 (the Books and Services and Low Income Family Acts), and the testimony of the Associate Superintendent for Academic Affairs in the Office of the Superintendent of Public Instruction, Mr. Jack C. Watson, under whose direction and supervision the rules or guidelines were prepared.

• • • • •

The basic procedures established in the State Superintendent's administrative rules or guidelines for implementation of the Low Income Family Act (Senate Bill 1489) are similar to those for the Books and Services Act (Senate Bill 1492) described above. The parents of non-public elementary or secondary school children from families with less than $3,000 annual income prepare an application for each child for whom aid is requested, giving identifying information as to the child and the school he attends. The application is forwarded to the Superintendent of the public school Educational Service Region in which the non-public school is located. The non-public school submits a certification to the regional Superintendent that the school meets the requirements of the Act, *i.e.*, that the school is a legal entity (lawfully incorporated as provided by law), has for the past two years provided education in compliance with the compulsory school attendance law of Illinois, is in compliance with Title VI of the Federal Civil Rights Act of 1964, is a non-profit institution, and has been duly inspected by the State Fire Marshal as required by law. The non-public school must also forward to the re-

gional Superintendent a certified average daily attendance figure for each child for whom a grant application has been made; such average daily attendance figure is determined in accordance with the method prescribed in Section 18-8 of the Illinois School Code.

The parental applications and non-public school certifications are reyiewed by the regional Superintendents and are then certified to the State Superintendent of Public Instruction. The State Superintendent then vouchers payment of the grant to which the parent is entitled based upon the average daily attendance of the child and the actual per-pupil amount contributed by the state to the public school district within which the non-public school child resides. The checks are made payable jointly to the applying parent and the non-public school attended by the child. The contacts or relationships between the non-public schools and the state government in implementation of the Low Income Families Act are thus of the wholly secular kind that are already in existence, *e.g.*, compulsory attendance requirements, fire and safety inspections and the like.

* * * * *

The Court therefore finds that Senate Bills 1489, 1492 and 1499 do not violate the "excessive entanglement" criterion of *Lemon*. The test is inescapably a matter of degree bottomed upon whether the involvement requires continuing official surveillance to determine if the funds are used for sectarian purposes or teaching. The non-public schools have long been subjected to state inspection and control over many secular aspects of their existence. They meet the same requirements of compulsory attendance laws, construction and safety of buildings, fire and safety inspections and other measures applicable to public schools. The in-

stant statutes do not require, either on their face or as proposed to be administered, any detailed administrative relationship for their enforcement. These are not the kind of "programs whose very nature is apt to entangle the state in details of administration." *Lemon, supra* at 616.

Turning to the first and second *Lemon* criteria—whether the program is secular in purpose and has a primary effect that neither advances nor inhibits religion. . . .

• • • • •

More difficulty is presented by Senate Bill 1489, the Low Income Family Act, which counsel for petitioner has aptly called the "storm center" of this controversy. This Act constitutes a direct state grant of monetary aid to a very narrowly defined and needy class—those families whose annual income totals less than $3,000—for the purpose of paying a portion of the cost of sending their children to non-public schools. Because of the class that is involved, the grants may be considered in the nature of public welfare assistance or "ADC". However, unlike welfare or "ADC" payments which may be used for *any* purpose, *including sending children to non-public schools,* the payments under Senate Bill 1489 can be used only for that purpose. In fact, the checks must be made payable jointly to the parents and the non-public schools. To the best of this Court's knowledge, Senate Bill 1489 presents a case of first impression and no reported decision has adjudicated the First Amendment issues that it poses. Moreover, no decided case has come to the Court's attention in which the evidence in the record was similar to the evidence adduced in the instant case. Careful and thoughtful consideration of the evidence introduced with regard to Senate Bill 1489 is warranted.

First it is not disputed, nor can it be, that the members of the class defined by the Low Income Family Act are mainly if not overwhelmingly concentrated in inner-city or "ghetto" areas, and particularly in the "ghetto" areas of Chicago. Accordingly, extensive and impressive evidence has been submitted concerning the conditions and educational shortcomings of the public schools in such areas. The most impressive evidence was the testimony of Dr. Donald Erickson, a professor in the Department of Education at the University of Chicago. It would unduly prolong this opinion to recite Dr. Erickson's qualifications, experience and published writings in the field of education and educational administration, especially in the area of inner-city schools, both public and non-public. It is in fact conceded that Dr. Erickson is one of the nation's leading, if not foremost, experts in his field and has closely observed and studied the public and non-public schools of the City of Chicago for the past ten years.

Dr. Erickson, after describing and summarizing the conditions in the inner-city public schools of Chicago, testified that the present situation concerning the education of children from low income families "is catastrophic." Dr. Erickson testified that the public schools in "ghetto" areas have failed to achieve even minimal levels of teaching impoverished pupils the basic educational skills; this failure is the result of a number of factors, including overcrowding of classrooms, inadequate facilities, high pupil-teacher ratio, hostility among pupils and teachers, and the inability or unwillingness of public school educators to adapt their curriculum and teaching methodology to the special and unique needs of children from low income families. Of these factors, Dr. Erickson placed the greatest stress upon the last one, *i.e.*, the inflexibility in curriculum and teaching

methodology. He emphasized that while the present public school curriculum and teaching techniques are adequate to cope with the learning needs of middle and upper income class children, they are indisputably unsatisfactory insofar as low income children are concerned. As a result Dr. Erickson concluded that, as noted above, the conditions in the public schools in "ghetto" areas have now reached a "catastrophic" state, and that unless some alternative to the public schools is provided at once, "several thousand" impoverished children in such areas will receive no basic education and will thus be deprived of the literacy skills necessary to become useful citizens.

It is thus clear, not only from Dr. Erickson's testimony but from the other evidence in the record, that public schools in the inner-city areas are doing a woefully inadequate job in teaching poor children the most basic literacy skills. The Court makes no findings as to the reasons or causes for this inadequacy and indeed, is not certain that precise reasons could be ascertained through empirical evidence. But the Court does find that the inadequacy exists. In reading levels alone numerous children in inner-city public schools are several years behind their more fortunate counterparts in higher income areas or in private schools. Unless some interim solution or help is provided by way of an alternative to the public schools, these children in the present generation will never catch up and will be educationally lost. Indeed, Dr. Erickson testified that two or three generations of such children may be lost because it could well take from ten to thirty years to carry out the basic reforms and improvements that are necessary in the public schools. The net result in the meantime is that more and more poor children will continue to drop out or fail in the inner-city public schools, and a corresponding

increase will occur in the ranks of welfare and ADC applicants, vagrants and criminals, which will in turn result in an increased tax burden to the general public.

Dr. Erickson further testified, and was substantiated by the testimony of three leading non-public school educators in the "ghetto" areas of Chicago, that existing non-public schools in such areas constitute the only alternative that is now available for receiving and educating impoverished pupils. Such schools are now succeeding in the critical areas where the public schools have failed, especially in the area of improving and adapting teaching techniques and methodology to fit the unique needs of children from low income families. The three non-public school educators who testified where Ann Tyskling, Director of the Harvard-St. George School, Mark Berry, Principal of the CAM Academy, and Sister Ann-Christine Heintz, Principal of St. Mary's Center for Learning. These witnesses gave graphic and compelling testimony that their schools can and do accept "drop-out" pupils from the ghetto area public schools and succeed in educating them where the public schools have failed to do so. Indeed, impressive numbers of such children have gone on to college. Unfortunately, such schools are severely hard-pressed financially, and could accept many more pupils if more funds were made available now to enable low income parents to enroll their children in the schools.

In sum, the evidence clearly shows and the Court finds that (1) there is a present and grave emergency in the failure of public schools in impoverished or "ghetto" neighborhoods to meet the basic educational needs of lower income pupils, and (2) existing non-public schools in such areas constitute the only alternative now available to at least partially meet the present crisis and save, at mini-

mum, several thousand impoverished children from being deprived of a basic education.

Counsel for the respondent actually has not disputed these facts, but contends that no matter how severe the emergency, the Low Income Family Act is unconstitutional because it will "advance religion" within the meaning of the *Lemon* decision, *i.e.*, the state funds authorized by the Act will flow to non-public schools that are predominantly church-affiliated. It is undisputed that the majority of non-public schools in the inner-city areas are Roman Catholic parochial schools. Father Robert Clark, the Superintendent of schools operated by the Catholic School Board of the Archdiocese of Chicago, has testified that while religious courses are taught in such schools, they are not compulsory; the students may elect to be excused from the religion classes if they or their parents so request and no grades are given to the students who do attend them. There are large numbers of non-Catholic children attending parochial schools in the inner-city or "ghetto" areas and in several such schools the majority of pupils are non-Catholic. Father Clark also testified that as a matter of Archdiocesan school policy there is no proselytization in the schools operated under the Catholic School Board's auspices.

However, the fact remains that such schools are sectarian. The Chicago Archdiocesan School Board promulgates a Manual of "School Policies and Administrative Regulations for Elementary Schools" (Respondent's Exhibit 6) which contains a number of instructions and admonitions concerning religious teaching in the parochial schools.* While there are now a great many lay teachers

* For example, § 2200 of the Manual provides that the parish pastor is ex officio the chief administrative officer of the school,

in the parochial schools (including some non-Catholics), there are also many sisters and priests, and §-6142.13 of the Manual provides that each Catholic elementary school "must have a qualified Religious Education Chairman appointed by the principal with the approval of the pastor." Although the religion course is not "compulsory" the one that is taught in the elementary parochial schools is Catholic (§ 6142.1) and "Apostolic experiences and liturgical experiences, in accord with approved liturgical norms should be an integral part of the religious education program." (§ 6142.11).

By taking notice of the religious character of the parochial schools, this Court does not mean in any way to disparage them or to deny their tremendous value and service in effectively educating large numbers of children in the state.* Indeed, the courts in virtually all past cases in this field have recognized and heralded the secular worth of parochial schools. But the Supreme Court in the *Lemon* case has declared:

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and that his principal responsibility is to see that an effective program of religious education is maintained in the school. § 4112.4 provides that, "Because the distinctive and unique purpose of the Catholic school is to create a Christian educational community—one enlivened by a faith that is shared among teachers and students—it is expected that teachers employed in the Archdiocesan elementary schools will be Catholics who have a knowledge of and commitment to the Catholic faith and to Christian living." See also §§ 1000, 4113, 5144, 6111.1, 6142.1, 61421.11 and 6142.13.

* Respondent's evidence shows that in 1969-70 there were 425,770 children enrolled in Catholic elementary and secondary schools throughout the State of Illinois. The vast majority (78.6%) were enrolled in parochial schools; the remainder were enrolled in interparochial, diocesan and private order Catholic schools. (Respondent's Exhibit 3, "Crisis in Illinois Non-Public Schools," Table D-7.) Father Clark testified that of all the children enrolled in Catholic schools in Chicago, approximately 10% were in inner-city or "ghetto" schools.

> "The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement is inevitable, lines must be drawn." (403 U. S. at 625.)

Counsel for the petitioner has argued with great force and eloquence that the present undisputed emergency in inner-city schools amply justifies the sustaining of Senate Bill 1489 as an interim and secular measure to prevent countless impoverished children being deprived of a basic education. Clearly, Senate Bill 1489's intended purpose and resulting effect are overwhelmingly secular and will not substantially "advance religion" or lead to political "divisiveness" as the Supreme Court feared would result by upholding the Pennsylvania and Rhode Island programs in the *Lemon* case. (403 U. S. at 622-623.) The Court is most sympathetic to the plight of the children for whose benefit Senate Bill 1489 is intended, and is also persuaded that petitioner's position is most compelling from the standpoint of reason and common sense. But the *Lemon* opinion as written does not lend itself to such a flexible and enlightened approach; it is in this Court's view a simplistic if not arbitrary prohibition of direct state grants of money to aid church-affiliated schools. Certainly this is the interpretation that has been given it by other lower courts. See *Wolman* v. *Essex*, 342 F. Supp. 399 (S. D. Ohio, Apr. 10, 1972); *Committee for Public Education* v. *Levitt*, 342

F. Supp. 439 (S. D. N. Y., Apr. 27, 1972); *Lemon* v. *Sloan*, ... F. Supp. ..... (E. D. Pa., Apr. 6, 1972).

The end result of thus interpreting *Lemon* (and its forerunner cases such as *Allen* and *Everson*) was accurately characterized by counsel for petitioner as a rule of law that requires the courts to engage in "the rankest of sophistry" in the name of preserving religious freedom. Thus, counsel argued:

"MR. REUBEN: Let's look at the result. Let's look at the result of a simplistic approach. What is being said then is, you can take a ghetto child, you can put him in a bus paid for by the state, you can give him a textbook paid for by the state, you can run him over to the parochial school if you want to use that example, you can give him a hot lunch, you can give him a shot in the arm, you can give him guidance, but you can't look at whether or not he is learning to read or write and help him there.

"THE COURT: Well, are you suggesting then if there is a complete breakdown in the public education system that it will be permissible, constitutionally permissible then for the legislature to appropriate the funds to every private school if their educational system is better than our public school system?

* * * * *

"MR. REUBEN: I will say this right now, which perhaps is totally responsive to your Honor. I have no doubt if tomorrow morning some fiend set fire and burned down every public school in the city that your Honor and every judge in the building and for that matter every judge in the country, including the Supreme Court—

"THE COURT: I am glad you're showing so much confidence in the judicial system.

"MR. REUBEN: —would find a way to fund every private school in the state or in the city where the tragedy occurred.

"THE COURT: Because of the emergency.

"MR. REUBEN: That is right. Now I suggest to you that the emergency that was portrayed before your Honor, before this Court the last three days is not one that anybody can graphically see by the burned bricks, mortar and wood. It is something that has to be visualized in the mind's eye, unless you go up to confront these people."

The Court believes petitioner's reasoning is not only persuasive but logically unassailable, and that to hold otherwise and hew to the *Lemon* line of demarcation is to engage in "the rankest of sophistry" in the name of preserving freedom of religion. *But the line has been drawn.* The State *may* spend public funds to furnish sectarian school children with school books, school bus transportation, school lunches, health care, counseling, guidance, and innovative educational services, but the State may *not* disburse funds to directly reimburse the parents or the sectarian schools for any portion of the costs of educating the children, because to do so would "advance religion." Such a result is not unlike that recently reached in *Flood* v. *Kuhn*, 32 L. Ed. 2d 278 (1972), where the Supreme Court, in adhering to the rule exempting professional baseball from the federal anti-trust laws, candidly recognized:

> "Even though others might regard this as as 'unrealistic, inconsistent, or illogical,' . . . the aberration is an established one . . ." (32 L. Ed. 2d at 743-744.)

So here, the "aberration" is an "established" one, and the Court regrettably has no choice but to hold that Senate Bill 1489 is invalid under the "advancement of religion" test of *Lemon*.

In sum, on the basis of the findings and conclusions herein, the Court hereby holds that Senate Bill 1489 is void for violation of the Religion Clause of the First Amendment to the U. S. Constitution, and that Senate Bills 1492 and 1499 are constitutional and valid. It is accordingly ordered that a People's Writ of Mandamus issue commanding the respondent to rescind and withdraw that portion of his Directive of June 30, 1972 which requires that no vouchers are to be processed or wararnts issued by respondent's office relating to expenditure of State funds under Senate Bills 1492 and 1499.

ENTER:

BEN SCHWARTZ

Circuit Judge

Dated: September 13, 1972.

APPENDIX B.

NONPUBLIC STATE PARENTAL GRANT PLAN FOR CHILDREN OF LOW INCOME FAMILIES ACT

P. A. 77-1890, eff. July 1, 1972
[Senate Bill 1489]

Sec.

AN ACT to promote the education of the children of this State, who attend nonpublic schools and who are mem-

bers of low income families, by providing for State grants to parents to help them pay for their children's education, thereby to serve a public purpose, and to repeal Public Act 77-1657. P. A. 77-1890, eff. July 1, 1972.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

1001. Short title.] § 1. This Act shall be known and may be cited as the "Nonpublic State Parental Grant Plan for Children of Low Income Families Act".

1002. § 2. Legislative fiinding and declaration of policy. The General Assembly has found and declares that (1) the security and welfare of the State of Illinois require that present and future generations of Illinois youth be assured ample opportunity for the fullest development of their intellectual capacities, and that this opportunity will be jeopardized unless Illinois elementary and secondary schools in economically depressed areas of low income population are assisted in their efforts to adequately educate their students; (2) these identifiable economically depressed areas of low income population are beset by severe and continuing social problems, including:

(a) high and continuing delinquency and crime rates;

(b) high and continuing unemployment rates;

(c) general economic and busines depression; and

(d) widely held attitudes of alienation from, and antipathy for the institutions and values of the State of Illinois and the United States; (3) these conditions are of critical importance and concern to the people of the State of Illi-

nois; (4) these conditions are due in large part to the failure of the public elementary and secondary schools in economically depressed areas of low income population to adequately educate Illinois youth and to prepare them to assume economically and socially responsible positions in their communities; (5) this failure of Illinois public schools is the direct result of overcrowded classrooms, outmoded facilities, and understaffed faculties that are a consequence of the inability of low income school districts to raise, by taxes, the additional funds necessary to provide adequate services; (6) children from low income families in this State face burdens and a future which requires the finest educational preparation available; (7) an effective primary and secondary school education is essential to the future well-being of these children and all the persons of this State; (8) to insure that the present generation of school age children, from low income families, receive adequate educations and are not permanently impaired in their economic and social futures, it is mandatory that the inadequacy of education in low income areas be immediately remedied; (9) the governmental duty to support the achievement of public welfare purposes in education may in part be fulfilled from government support of the nonpublic education of children of low income families; (10) nonpublic schools, by providing instruction to children coming from economically depressed areas of our State, make an important contribution to the alleviation of this crisis facing our citizenry; (11) not only do these nonpublic schools contribute directly and significantly in the quality of education that they offer; but (12) with rapidly increasing costs occasioned by the rise in school population, consequent demands, in the endeavor for excellence, upon education generally and the struggle of the State of Illi-

nois, commonly with many other states, to find sources by which to finance education, while also attempting to bear the mounting financial burden of the many other areas of modern state governmental responsibility, nonpublic schools also relieve the State of a significant financial burden which if left unchecked, would result in an intolerable financial and educational burden to the State; (13) government support of economically depressed low income area nonpublic primary and secondary schools will result in a reduction of the public school student population in such areas, and thereby reduce classroom overcrowding, raise the teacher-student ratio, and release funds for the repair and construction of various necessary educational facilities; (14) due to a decline in the birth rate, migration of families from low income population areas, and increased tuition costs of nonpublic schools (occasioned in part by higher teacher salaries) there has been a continuing decline in the enrollment in non-public schools in low income population areas that seriously threatens the continued existence of numerous nonpublic schools in such low income population areas; (15) in the event that a significant proportion of nonpublic schools in low income population areas of the State were forced to close by a continued decline in enrollments, the burden imposed upon the existing public schools in low income areas, resulting from the necessary absorption of former nonpublic school students into the public schools, would require massive expenditures for increased physical facilities and teachers; (16) because of the necessary and unavoidable time required to build new schools and train and hire new teachers, existing public schools in low income population areas would be forced for a period of years to accommodate a great mass of new students, previously enrolled in nonpublic schools; (17) the

consequence of this sudden influx of masses of new students into the public schools, already grossly overburdened, understaffed, and overcrowded, would be a totally chaotic and unacceptable condition in the public schools in low income population areas resulting in those schools being completely unable to perform their vitally important function of educating the students enrolled therein; (18) freedom to choose a nonpublic school, meeting reasonable State standards, for a child's education is a fundamental parental liberty and a basic right; (19) the State has the right and duty, in order to promote the future well-being of all its citizens and particularly those who are economically and socially disadvantaged, to provide State grants to low income parents to help them pay for the education of their children in nonpublic schools; such grants serve a public purpose.

1003. § 3. Definitions. The following terms whenever used or referred to have the following meanings except where the context clearly indicated otherwise:

(a) "nonpublic school" means any non-profit school, which is a legal entity, other than a public school within the State, offering education for grades kindergarten through 12, or any combination of such grades.

1. which, for 2 full school years prior to its participation under this Act, has, for its pupils, provided education that is in compliance with the compulsory school attendance requirements of law, Section 26—1 of "The School Code; and

2. which is in compliance with Title VI of the Civil Rights Act of 1964 (Public Law 88-352);[1]

1. 42 U. S. C. A. § 2000d et seq.

(b) "non-profit" as applied to a nonpublic school means that no part of the school's net earnings inure, or may lawfully inure, to the benefit of any private shareholder or individual;

(c) "parent" means a parent, guardian, or person standing in the place of a parent of a child enrolled in a nonpublic school;

(d) "Superintendent" means the Illinois Superintendent of Public Instruction or the successor to his duties as may be provided by law.

1004. Grant as partial payment of expenses—Limitations on income.] § 4. Under this Act, the parent of any child attending a nonpublic school is entitled, as partial payment for the expenses incurred in providing schooling, to a yearly per child State grant. This per child State grant shall be equal to the actual per pupil amount contributed by the State, as provided for in Sections 18—8 to 18—10 of "The School Code", to the public school district within which the particular nonpublic school child resides. State grant payments, provided for in this Act, shall be made semi-annually.

This Act is limited to parents whose family income is less than $3,000 per year, or whose annual family income is in excess of $3,000 per year from payments under the program of aid to families with dependent children under the Illinois plan approved under Title IV of the Social Security Act.[1]

1005. Application for grant—Form—Information required.] § 5. A parent entitled to a grant or grants from the State pursuant to Section 4 of this Act[2] may make ap-

1. 42 U. S. C. A. § 601 et seq.
2. Chapter 122, § 1004.

consequence of this sudden influx of masses of new students into the public schools, already grossly overburdened, understaffed, and overcrowded, would be a totally chaotic and unacceptable condition in the public schools in low income population areas resulting in those schools being completely unable to perform their vitally important function of educating the students enrolled therein; (18) freedom to choose a nonpublic school, meeting reasonable State standards, for a child's education is a fundamental parental liberty and a basic right; (19) the State has the right and duty, in order to promote the future well-being of all its citizens and particularly those who are economically and socially disadvantaged, to provide State grants to low income parents to help them pay for the education of their children in nonpublic schools; such grants serve a public purpose.

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2. Chapter 122, § 1004.

plication therefor on a form which shall be signed and sworn or affirmed to by the applicant, and shall include the following information:

(a) The name and address of the applicant;

(b) The name, address, age, and grade level of the child with respect to whom the application is made;

(c) The relationship of the applicant to the child for whom the application is made;

(d) The name and address of the nonpublic school in which the child is enrolled;

(e) A certification that the applicant's family income, for the last taxable year preceding the school year for which a State grant is requested, was either less than $3,000 or was in excess of $3,000 from payments under the program of aid to families with dependent children under the Illinois plan approved under Title IV of the Social Security Act.[1] A parent shall make a separate application for each and every one of his or her children who are in attendance at a nonpublic school.

1006. Notification of nonpublic schools of application for grant.] § 6. Parents applying for a State grant for the semi-annual parental grant payment period ending January 15 shall so notify the appropriate nonpublic school or schools before or during the first week of the school year for which a grant is requested. Parents applying for a State grant for the semi-annual parental grant payment period ending on the last day of the regular school year shall so notify the appropriate nonpublic school or schools before or during the week including January 16 of the school year for which a grant is requested. The Superintendent may make provision for late notifications.

1. 42 U. S. C. A., § 601 et seq.

1007. Amount of grant determined by average daily attendance.—Dates for application.] § 7. The actual amount of each semi-annual State parental grant shall be determined by the average daily attendance of each applicant's child, as the Superintendent shall provide. Average daily attendance shall be determined by the method prescribed in Section 18—8 of "The School Code".

Each parent, who has applied for and is entitled to a parental grant, shall, for the payment period ending January 15, forward his or her application form or forms, including the amount of each parental grant, to the Superintendent of the Educational Service Region on or before February 15 of the school year for which payment is requested. Each parent, who has applied for and is entitled to a parental grant, shall, for the payment period ending on the last day of the regular school year, forward his or her application to the Superintendent of the Educational Service Region on or before July 15 of the school year for which payment is requested. The Superintendent may make provision for the acceptance of applications and certified parental grant totals received after February 15 or July 15 respectively.

1008. Certification of amount of payment for grant—Payment.] § 8. Upon receipt of the proper information, the Superintendent of each Educational Service Region shall review the certified documents submitted to him by each parent and shall certify to the Superintendent the total amount of State payment to which each parent is entitled by virtue of the parental applications submitted. The Superintendent of each Educational Service Region shall certify each parent's payment amount no later than March 1, for the semi-annual parental grant payment

period ending January 15, and no later than August 1, for the semi-annual parental grant payment period ending on the last day of the regular school year. The Superintendent may make provision for the acceptance of the Educational Service Region's reports of certified amounts received after March 1 or August 1 respectively. The Superintendent shall voucher those certified amounts for payment to each parent no later than March 15 and August 15 respectively. Each certified amount shall be made payable jointly to the applying parent and the nonpublic school to which the particular parental application pertains.

1009. Proration of monies appropriated.] § 9. In the event that the amount of monies appropriated during any fiscal year are insufficient for the payment of the parental State grants provided for herein, payment shall be made in that proportion that the total amount of such payments bears to the total amount of money available for payment.

1010. Exclusion of applicants from grant under Nonpublic State Parental Grant Act.] § 10. Any parent applying for and receiving a State parental grant under the provisions of this Act shall not be entitled to a parental grant under the "Nonpublic State Parental Grant Act" enacted by the 77th General Assembly.[1]

1011. Administration of Act—Rules, regulations and procedures.] § 11. This Act shall be administered by the Superintendent of Public Instruction who shall adopt any and all rules, regulations and procedures deemed necessary to insure compliance with and the implementation of the programs and purposes of this Act.

1012. Partial invalidity—Severability.] § 12. If any section, clause or other portion of this Act shall be held

1. Chapter 122, § 1021 et seq.

invalid, that decision shall not affect the validity of the remaining portions of this Act. It is hereby declared that all such remaining portions of this Act are severable, and that the General Assembly would have enacted such remaining portions if the portions that may be so held to be invalid had not been included in this Act.

1013. Repealer

1014. Effective date.] § 14. This Act becomes effective on July 1, 1972 or upon its becoming a law, whichever is later.